



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 9, 2023
MOAHR Docket No.: 23-003168
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION
FOR INTENTIONAL PROGRAM VIOLATION (TRAFFICKING)

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent [REDACTED] [REDACTED] committed an intentional program violation (IPV) by trafficking Food Assistance Program (FAP) benefits. Pursuant to MDHHS' request for hearing and MCL 400.9, 7 CFR 273.16 and 7 CFR 273.18, this matter is before the undersigned Administrative Law Judge. After due notice, a hearing was held via telephone conference on October 11, 2023.

Joseph Adcock, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS.

Respondent did not appear at the hearing, and it was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

ISSUES

1. Did MDHHS establish, by clear and convincing evidence, that Respondent committed an intentional program violation (IPV) by trafficking Food Assistance Program (FAP) benefits?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Has MDHHS established a recipient claim against Respondent for \$ [REDACTED] based on FAP benefits trafficked by Respondent?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. During a March [REDACTED] 2021 interview, the rights and responsibilities were reviewed with Respondent, who stated she understood them. (Exhibit A, pp. 86-88)
2. In an Assistance Application Respondent submitted to MDHHS on March [REDACTED] 2022, MDHHS notified Respondent of the FAP usage responsibilities. This includes ensuring that FAP benefits are not used by unauthorized persons, must only be used to purchase eligible food for the FAP household members, and that buying or selling FAP benefits was prohibited. (Exhibit A, pp. 77-84 and 101-116; Regulation Agent Testimony)
3. During the fraud period, Respondent received FAP for a household of eight, herself and seven children. (Exhibit A, p. 68).
4. Between November 1, 2022 through February 28, 2023, Respondent's Electronic Benefit Transfer (EBT) card, was used for multiple transactions under her Sam's Club Membership, to purchase large quantities of Red Bull, which is commonly purchased for resale in a retail location setting. The transactions totaled \$ [REDACTED] (Exhibit A, pp. 10-58; Regulation Agent Testimony)
5. Respondent did not report her EBT card as lost during the fraud period and she did not have an alternate payee. (Exhibit A, pp. 62-63 and 74)
6. Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the FAP usage responsibilities. (Exhibit A, pp. 75-76)
7. Respondent has no prior FAP IPV disqualifications. (Exhibit A, pp. 99-100)
8. On June 6, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally trafficked FAP benefits from November 1, 2022 through February 28, 2023 (fraud period). OIG requested that (i) Respondent repay MDHHS as a recipient claim the value of trafficked benefits totaling \$ [REDACTED] and (ii) Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV by trafficking. (Exhibit A, pp. 1-124)
9. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services as undeliverable.

CONCLUSIONS OF LAW

MDHHS policies are contained in the MDHHS Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq.*, and Mich Admin Code, R 400.3001 to R 400.3015.

Trafficking and IPV Disqualification

MDHHS alleges that Respondent committed an IPV by trafficking FAP benefits and requests that Respondent be disqualified from FAP eligibility. IPV is defined, in part, as having intentionally “committed any act that constitutes a violation of [FAP], [FAP federal] regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of [FAP] benefits or EBT [electronic benefit transfer] cards.” 7 CFR 273.16(c)(2) and (e)(6). Trafficking includes buying, selling, stealing, or otherwise effecting, or attempting to buy, sell, steal or otherwise effect, “an exchange of [FAP] benefits issued and accessed via [EBT] cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone” 7 CFR 271.2.

To establish an IPV by trafficking, MDHHS must present clear and convincing evidence that the household member committed, and intended to commit, the IPV. 7 CFR 273.16(e)(6); BAM 720, p. 1. Clear and convincing evidence is evidence sufficient to result in “a firm belief or conviction as to the truth of the precise facts in issue.” *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 114-115; 793 NW2d 533 (2010); see also M Civ JI 8.01. The clear and convincing standard is “the most demanding standard applied in civil cases.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995).

In this case, MDHHS alleged that Respondent committed an IPV by purchasing large quantities of Red Bull Energy drinks for resale at retail locations.

In an Assistance Application Respondent submitted to MDHHS on March 17, 2022, MDHHS notified Respondent of the FAP usage responsibilities. This includes ensuring that FAP benefits are not used by unauthorized persons, must only be used to purchase eligible food for the FAP household members, and that buying or selling FAP benefits was prohibited. (Exhibit A, pp. 77-84 and 101-116; Regulation Agent Testimony). Additionally, during a March 18, 2021 interview, the rights and responsibilities were reviewed with Respondent, who stated she understood them. (Exhibit A, pp. 86-88). Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the FAP usage responsibilities. (Exhibit A, pp. 75-76).

Between November 1, 2022 through February 28, 2023, EBT card was used for multiple transactions under her Sam’s Club Membership, to purchase large quantities of Red Bull, which is commonly purchased for resale in a retail location setting. The transactions totaled \$ [REDACTED]. This totaled 321 cases of Red Bull and was 59.18% of Respondent’s

FAP benefits. (Exhibit A, pp. 10-58; Regulation Agent Testimony). Respondent did not report her EBT card as lost during the fraud period and she did not have an alternate payee. (Exhibit A, pp. 62-63 and 74). During the fraud period, Respondent received FAP for a household of eight, herself and seven children. (Exhibit A, p. 68). As indicated on the Red Bull warning label, the drinks are not recommended for children. (Exhibit A, p. 59).

Under the facts presented, MDHHS has established by clear and convincing evidence that Respondent trafficked FAP benefits by purchasing large quantities of Red Bull energy drinks for resale at retail locations. Thus, Respondent did commit an IPV. An individual who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits. 7 CFR 273.16(b). Because Respondent had no prior FAP IPV violations, Respondent is subject to a 12-month disqualification from the FAP program. 7 CFR 273.16(b)(BAM 720, p. 16). (Exhibit A, pp. 99-100).

Repayment

A party is responsible for a recipient claim to MDHHS in an amount equal to the value of trafficked benefits. 7 CFR 273.18(a)(ii). The value of the trafficked benefits is determined by (i) the individual's admission; (ii) adjudication; or (iii) the documentation that forms the basis for the trafficking determination. 7CFR 273.18(c)(2). Documentation used to establish the trafficking determination can include an affidavit from a store owner or sworn testimony from a federal or state investigator of how much a client could have reasonably trafficked in that store, which can be established through circumstantial evidence. BAM 720, p. 8.

Here, MDHHS seeks repayment from Respondent of \$ [REDACTED] the amount of Respondent's FAP benefits involved in the trafficked FAP benefits.

As noted above, between November 1, 2022 through February 28, 2023, EBT card was used for multiple transactions under her Sam's Club Membership, to purchase large quantities of Red Bull, which is commonly purchased for resale in a retail location setting. The transactions totaled \$ [REDACTED] (Exhibit A, pp. 10-58). Respondent did not report her EBT card as lost during the fraud period and she did not have an alternate payee. (Exhibit A, pp. 62-63 and 74). During the fraud period, Respondent received FAP for a household of eight, herself and seven children. (Exhibit A, p. 68). As indicated on the Red Bull warning label, the drinks are not recommended for children. (Exhibit A, p. 59).

The evidence presented by MDHHS was sufficient to establish a valid recipient claim for \$ [REDACTED]

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Because MDHHS has established by clear and convincing evidence that Respondent committed an IPV, Respondent is subject to a FAP disqualification.
2. Respondent is responsible to MDHHS for a recipient claim of \$ [REDACTED] for trafficked IPV benefits.

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP recipient claim in the amount of \$ [REDACTED] less any amounts already recouped/collected, for the fraud period.

IT IS FURTHER ORDERED that Respondent be personally disqualified from FAP for a period of 12 months.

CL/dm



Colleen Lack
Administrative Law Judge

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via-Electronic Mail :

Petitioner
OIG
**MDHHS-OIG-
HEARINGS@michigan.gov**

DHHS
Richard Latimore
Wayne-Conner-DHHS
**MDHHS-Wayne-57-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

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